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SIMITOSKI, MICHAEL J

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SEAN BRENNAN

Appeal 2007-3485
Application 10/050,752
Technology Center 2100

Decided: June 16, 2008

Before JOSEPH L. DIXON, HOWARD B. BLANKENSHIP, and
JAY P. LUCAS, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 4, 5, 7-13, and 16-34. Claims 1-3, 14, and 15 have been withdrawn from consideration after a restriction requirement, and claims 6, 24-27, and 31-34 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

BACKGROUND

Appellant's invention relates to a system and method for accomplishing two-factor user authentication using the Internet. An understanding of the invention can be derived from a reading of exemplary claim 4 which is reproduced below.

4. A method of accomplishing two-factor user authentication, comprising:

providing first and second user authentication methods, wherein the first and second user authentication methods are selected to authenticate at least two factors associated with the user;

enabling a user to communicate authentication data for both authentication methods to a first web site using the internet;

authenticating the user at the first web site using the first authentication method;

enabling the communication of at least some of the authentication data from the first web site to a second web site using the internet;

authenticating the user at the second web site based on the authentication data transferred from the first web site using the second authentication method; and

wherein both web sites are involved in user authentication using the authentication data and wherein access to content on the first web site is restricted if the user is not authenticated to both web sites.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Ying	US 6,853,980 B1	Feb. 8, 2005
Tan	US 2001/0045451 A1	Nov. 29, 2001
Krueger	US 2002/0077837 A1	Jun. 20, 2002

Aladdin. "eToken: The Key to Security for the Internet Age", July 20, 2000.

RSA Security, Inc. "RSA Web Security Portfolio - How RSA SecurID Agents Can Secure Your Website", August 2000.

Stallings, William. Network Security Essentials, Applications and Standards, Prentice- Hall, Inc., pp. 203-223.

REJECTIONS

Claims 4-5, 7-9, 18, 21, and 28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ying and Krueger.

Claims 10-12, 19-20, 22, 23, 29, and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ying and Krueger further view of RSA.

Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Ying, Krueger and RSA further view of Tan and Aladdin.

Claims 16-17 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Ying, Krueger and RSA further in view of Stallings.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and Appellant regarding the above-noted rejection, we make reference to the Examiner's Answer (mailed Jan. 17, 2007) for the reasoning in support of the rejections, and to Appellant's Brief (filed Oct. 18, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellant's Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellant and the Examiner. As a consequence of our review, we make the determinations that follow.

35 U.S.C. § 103(a)

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," *Id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. *KSR*, 127 S. Ct. at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield

predictable results." *Id.* The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* at 1740.

The Federal Circuit recently recognized that "[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing *KSR*, 127 S. Ct. 1727, 1739 (2007)). The Federal Circuit relied in part on the fact that Leapfrog had presented no evidence that the inclusion of a reader in the combined device was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Id.* (citing *KSR*, 127 S. Ct. at 1740-41).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

However, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004). *Cf. In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art." *In re Lowry*, 32 F.3d 1579, 1582 (Fed. Cir. 1994) (citing *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983)). "Claims must be read in view of the specification, of which they are a part." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc). "[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

At the outset, we note that Appellant has elected to group independent claims 4, 21, and 28 together in a group as indicated at page 11 of the Brief. Therefore, we select independent claim 4 as the representative claim and will address arguments thereto.

From our initial review of the teachings of Ying in view of Krueger, we find the combined teachings to teach and fairly suggest the use of multiple user authentications or verifications of a user and user's credit card information across plural websites to allow a user to access content on the first website which is restricted if the user is not authenticated to both websites. Clearly, if the credit card information for a user is not verified, authenticated, or approved by the second website, the user will not be able to access the content (which is the fonts available for purchase) if payment is not made. We find this combination clearly teaches the invention as recited

in independent claim 4. Therefore, we look to Appellant's responsive arguments to show error in the Examiner's initial showing of obviousness over the combined teachings of Ying and Krueger.

Appellant argues that neither Ying nor Krueger teaches or suggests an authentication method and system using at least two different factors at two or more websites as taught by Appellant and claimed in independent claim 4. (App. Br. 12 and 13). Appellant relies upon Appellant's Specification at page 9, lines 10-18, to support this position. From our review of Appellant's Specification, we find that the relied upon portion is not commensurate in scope with the broader language of independent claim 4. Therefore, Appellant's reliance thereon is not persuasive of error in the Examiner's initial showing of obviousness.

Appellant argues that it is well-known in the security field that authentication can be based upon three factors: (1) what you know, (2) what you have, and (3) what you are. Authentication based on one of these factors is termed a single-factor authentication and authentication based on two of these factors is termed a two-factor authentication. (App. Br. 13). Here, Appellant maintains that Appellant teaches adding a token to a password authenticated website to authenticate not only what you know (password) but also what you have (token).

Unfortunately, we do not find support in the language of independent claim 4 for Appellant's proffered inclusion of a token in independent claim 14, which is expressly recited in dependent claim 10. Hence, independent

claim 4 is broader than the proffered inclusion of a token. Therefore, Appellant's argument is not persuasive of error in the Examiner's initial showing of obviousness.

Appellant argues that the portions of Ying relied upon by the Examiner do not describe authentication of an end user at a second site or server. (App. Br. 14). Appellant argues that Ying described approving or verifying an end user's credit card information without authenticating his identity at the second server. (App. Br. 14). Here again, Appellant's argument regarding authenticating the identity goes beyond the express language of independent claim 4 and is not persuasive of error in the Examiner's initial showing.

Appellant argues that credit card "verification" does not attest what you know, what you have, or what you are, and is therefore not user authentication. (App. Br. 14). We disagree with Appellant wherein a user generally has a credit card (tangible item) in his or her possession to read and input the appropriate information. Just as with a token which may be changing or not. Furthermore, Appellant has not identified any express definition or interpretation of any of the recited claim limitations in Appellant's Specification with which to further interpret the claim limitations at issue. Therefore, we do not find Appellant's argument persuasive of error in the Examiner's initial showing of obviousness.

Appellant argues that the credit card processor in Ying is not an authentication method and that the card information is at most what the end user "knows" rather than what the end user "has" such as a token-generated synchronous code enabling the card information processing server to

authenticate the identity of the end user. (App. Br. 15). Again, Appellant's argument is not commensurate in scope with the language of independent claim 4 and therefore is not persuasive of error in the Examiner's initial showing of obviousness.

Appellant further argues that there must be some suggestion or motivation to modify the references or to combine the reference teachings and that the relied upon teachings only teach a single factor authentication. Here, we disagree with Appellant concerning the single factor authentication of the same type. Therefore, we do not find Appellant's argument persuasive of error in the Examiner's combination as set forth in the Answer. Since Appellant has not shown error in the Examiner's initial showing of obviousness of independent claim 4, we will sustain the rejection of independent claim 4 and corresponding dependent claims 5, 9, and 18 which are grouped therewith by Appellant.

Appellant additionally includes paragraphs directed to dependent claims 7 and 8, but merely sets forth the language of these claims without a specific argument for patentability. Therefore, these claims will fall with independent claim 4.

Appellant additionally includes paragraphs directed to independent claims 21 and 28, but reiterates the same arguments advanced with respect to dependent claim 4. Therefore, these claims will fall with independent claim 4.

With respect to dependent claims 10-12, 19, 20, 22, 23, 29, and 30 (we note that Appellant has canceled claims 24-27 and 31-34), Appellant argues that neither Ying nor Krueger discloses either user identification at a second website or a second factor of authentication to an existing single factor authentication system and that RSA also fails to show a two factor authentication method. We select dependent claim 10 as the representative claim for this grouping and address arguments thereto.

We disagree with Appellant's argument as discussed above with respect to the two-factor authentication. Hence, we do not find Appellant's argument persuasive of error in the Examiner's initial showing of obviousness. Appellant further argues that there is no suggestion or motivation to combine RSA with Ying and Krueger, but Appellant provides no evidence to show error in the Examiner's proffered motivation. Therefore, we do not find Appellant's argument persuasive of error in the Examiner's initial showing of obviousness, and we will sustain the rejection of dependent claims 10-12, 19, and 20.

Appellant additionally includes a paragraph directed to dependent claim 22, and Appellant presents the same arguments advanced with respect to dependent claim 10. Therefore, we do not find Appellant's argument persuasive of error in the Examiner's initial showing of obviousness, and we will sustain the rejection of dependent claims 22, 23, 29, and 30 as grouped therewith by Appellant.

CONCLUSION

To summarize, we have sustained the rejection of claims 4, 5, 7-13, 16-23, and 28-30 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

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